analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $3,875.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $38,750 to cover the costs of the advisory committee. Further advance deposits of $38,750 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Interregional Research Project Number 4 (IR-4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A fee of $1,950 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled ''Tolerance Petition Fees'' and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 02–5868 Filed 3–12–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH–FRL–7157–2]

RIN 2050–AE94

Hazardous Waste Management System; Definition of Solid Waste; Toxicity Characteristic

AGENCY: Environmental Protection Agency.

ACTION: Final Rule; Response to court order vacating regulatory provisions.

SUMMARY: This action responds to two court vacaturs of regulations under the Resource Conservation and Recovery Act (RCRA), first, by deleting regulatory language that classified mineral processing characteristic sludges and by-products being reclaimed as solid wastes under RCRA's hazardous waste management regulations, and secondly, by codifying the decision that the Toxicity Characteristic Leaching Procedure (TCLP) may not be used for determining whether manufactured gas plant (MGP) waste is hazardous under RCRA. The Environmental Protection Agency (EPA) initially took action on these matters as part of the Phase IV Land Disposal Restrictions (LDR) on May 26, 1998. Today's revisions carry out vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit in *Association of Battery Recyclers* v. *EPA (ABR).* In addition, we are announcing that we plan to propose a separate rule to revise the definition of solid waste.

EFFECTIVE DATE: This rule is effective on March 13, 2002.

ADDRESSES: Supporting materials to this final rule are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2001–TCVF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The docket index and some supporting materials are available electronically. See the beginning of the Supplementary Information section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call (703) 920–9810 or TDD (703) 412–3323. For information on definition of solid waste aspects of the rule, contact Ms. Ingrid Rosencrantz, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. [e-mail address and telephone number: *rosencrantz.ingrid@epa.gov* (703–308–8285).] For information on the manufactured gas plant wastes and the TCLP, contact Mr. Greg Helms, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW.,

Washington, D.C., 20460. [E-mail address and telephone number: *helms.greg@epa.gov* (703–308–8845).]

SUPPLEMENTARY INFORMATION: Whenever the terms ''we'' or ''Agency'' are used throughout this document, they refer to the Environmental Protection Agency (EPA).

The docket index for the rule is available in electronic format on the Internet at: <*http://www.epa.gov/epaoswer/hazwaste/recycle/battery.htm*>.

We will keep the official record for this action in paper form. The official record is the paper record maintained at the RCRA Information Center, also referred to as the Docket, at the address provided in the **ADDRESSES** section at the beginning of this document.

I. Why Are We Taking This Action?

EPA is taking today's action in response to vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit in *Association of Battery Recyclers,* v. *EPA* 208 F.3d 1047 (2000). After EPA promulgated the final Phase IV LDR rule on May 26, 1998 (63 *FR* 28556), the Association of Battery Recyclers, the National Mining Association and other trade groups challenged this rule. On April 21, 2000, the D.C. Circuit issued a decision that vacated two parts of the Phase IV LDR rule. The court vacated the portion of the rule that asserted jurisdiction and imposed conditions over mineral processing characteristic by-products and sludges being stored prior to being recycled in beneficiation or primary mineral processing operations. The court also vacated the portion of the rule providing for use of the TCLP for determining whether MGP waste exhibits the characteristic of toxicity. *Association of Battery Recyclers* v. *EPA,* 208 F.3d 1047 (2000).

Regarding the mineral processing secondary materials, the Phase IV LDR rule revised a 1985 rule that defined the circumstances under which EPA classified secondary mineral processing materials undergoing reclamation as solid wastes under Subtitle C of RCRA. The 1998 Phase IV LDR rule amended the 1985 rule and relaxed jurisdiction over spent materials reclaimed within the mineral processing industry, provided certain conditions were met. The Phase IV LDR rule also asserted jurisdiction over some previously-unregulated secondary materials (characteristic by-products and sludges) reclaimed within the mineral processing industry. The rule classified these by-products and sludges as wastes if they were stored without meeting the same conditions. EPA codified the conditions under which the materials would be regulated as solid wastes at 40 CFR 261.4(a)(17) and inserted references to these conditions into the regulation asserting authority over reclamation in 40 CFR 261.2(c)(3). Today, in response to the D.C. Circuit Court's decision, EPA is codifying the vacatur by deleting a parenthetical statement in the second sentence of 40 CFR 261.2(c)(3) and making conforming changes to 40 CFR 261.4(a)(17). In § 261.4(a)(17), EPA is replacing the term ''secondary materials'' (which includes sludges and by-products, as well as spent materials) with the more narrow term ''spent materials.'' These changes inform the public that mineral processing characteristic sludges and by-products being reclaimed are not solid wastes, and mineral processing characteristic spent materials remain eligible for the conditional exclusion when being reclaimed.

To further the goal of encouraging legitimate recycling while protecting human health and the environment, EPA has decided to undertake a separate future rulemaking to propose additional revisions to its current recycling regulations. We believe that removing the specter of RCRA control where it is not necessary can spur increased reuse and recycling of hazardous waste, and will lead to better resource conservation and improved materials management overall. For materials undergoing reclamation, in the proposed rule we expect to request comment on how interested parties would distinguish materials that are discarded from materials that remain in use in a continuous industrial process and anticipate proposing a definition of ''continuous industrial process.'' In addition, EPA has been working with a group of stakeholders concerned with recycling in the metal finishing industry and we are committed to proposing, either as part of that action or as a separate rule, removal of regulatory barriers in order to increase recycling of sludges from metal finishing operations.

Although EPA has not established a formal comment period, we anticipate moving quickly to propose this rule; interested parties are welcome to submit suggestions now for this future proposal, directing them to Ms. Ingrid Rosencrantz at the address given in the **FOR FURTHER INFORMATION CONTACT** section.

The court's decision in *ABR* also addressed another provision of the Phase IV LDR Rule providing for use of the Toxicity Characteristic Leaching Procedure (TCLP) to determine whether mineral processing waste, and manufactured gas plant [1] (MGP) wastes, are RCRA hazardous wastes under 40 CFR 261.24 (63 *FR* 28597–98; May 26, 1998).

In its ruling in *ABR,* the court found that EPA produced sufficient evidence that the TCLP bears a ''rational relationship'' to plausible mineral processing waste management practices, and upheld the use of the TCLP to evaluate mineral processing wastes. Regarding MGP waste, the court found that EPA produced insufficient evidence that co-disposal of MGP waste from remediation sites with municipal solid waste (MSW) has happened or is likely to happen. The court concluded that ''* * * the EPA has not justified its application of the TCLP to MGP waste'' and consequently ''* * * vacate[d] the Phase IV rule insofar as it provides for the use of the TCLP to determine whether MGP waste exhibits the characteristic of toxicity.'' *ABR* v. *EPA,* 208 F.3d at 1064. EPA is taking final action today to codify this vacatur by promulgating language exempting MGP wastes from the Toxicity Characteristic regulation.

II. Why Do We Have Good Cause for Promulgating an Immediately Effective Final Rule Without Prior Notice and Opportunity for Public Comment?

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public comment procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for removal of these provisions without prior proposal and opportunity for comment. As a matter of law, the order issued by the United States Court of Appeals for the District of Columbia Circuit on April 21, 2000, vacated the provisions of the final Phase IV LDR rules described above, making them non-binding and unenforceable. It is, therefore, unnecessary to provide notice and an opportunity for comment on this action, which merely carries out the

[1] Manufactured gas plants are facilities that produced gas from coal or oil for lighting, cooking, and heating during the 1800s until the mid 1900s. No active MGP facilities currently exist, although a range of gas production residues remain at the sites of former MGP facilities. Therefore, the only wastes generated at these sites will be from site remediation. MGP wastes are typically tars, sludges, lampblack, light oils, spent oxide wastes, and other hydrocarbons, and soils and debris contaminated with these materials. See 63 FR 28574, May 26, 1998, and EPA 542–R–00–005, *A Resource for MGP Site Characterization and Remediation* for more information on MGP sites and wastes.

court's order. For the same reasons, EPA finds that it has good cause to make the revisions immediately effective under 5 U.S.C. 553(d) and section 3010(b) of RCRA. 42 U.S.C. 6930(b). Further, the rule imposes no new requirements, so members of the regulated community do not need time to come into compliance.

III. To Whom Does the Final Rule Withdrawal of Provisions Apply?

This final rule applies to the owners and operators of facilities that generate or reclaim characteristically hazardous by-products or sludges within the mineral processing industry and to generators of manufactured gas plant wastes. We plan to further consider other revisions to the definition of solid waste (40 CFR 261.2) and will propose these revisions, as appropriate, in the future.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget (OMB). Because the EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This action does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This action does not involve the application of new technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply. This action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this action, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective date of March 13, 2002. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: March 7, 2002.

Christine T. Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.2 is amended by revising paragraph (c)(3) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

(3) *Reclaimed.* Materials noted with a ''*'' in column 3 of Table 1 are solid wastes when reclaimed (except as provided under § 261.4(a)(17)). Materials noted with a ''—''in column 3 of Table 1 are not solid wastes when reclaimed.

* * * * *

3. Section 261.4 is amended by revising paragraph (a)(17) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(17) Spent materials (as defined in § 261.1) (other than hazardous wastes listed in subpart D of this part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in paragraph (a)(17)(iv) of this section, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in 40 CFR 260.10), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Regional Administrator or State Director may make a site-specific determination, after public review and

comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Regional Administrator or State Director must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Regional Administrator or State Director providing the following information: The types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of paragraph (a)(7) of this section, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

* * * * *

4. Section 261.24 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 261.24 Toxicity characteristic.

(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at the concentration equal to or greater than the respective value given in that table.

* * *

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[FR Doc. 02–6063 Filed 3–12–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 98–77, 90–571, 92–237, 99–200, and 95–116; FCC 02–43]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts certain modifications to the existing federal universal service contribution system. Based on examination of the record, the Commission concludes that these modifications are warranted because they will streamline and improve the current system without undue disruption while the Commission considers other, more substantial reforms.

DATES: Effective April 12, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, and 95–116, FCC 02–43 released on February 26, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In the Report and Order, we adopt certain modifications to the existing federal universal service contribution system. Based on examination of the record, we conclude that these modifications are warranted because they will streamline and improve the current system.

II. Report and Order

2. In the Notice of Proposed Rulemaking initiating this proceeding, *see* 66 FR 28718 (May 24, 2001), we recognized the need to reassess periodically the current contribution methodology to ensure that it remains consistent with the goals of the Act as the telecommunications marketplace evolves. Although we are seeking more focused comment on specific proposals to reform the Commission's universal service contribution methodology, we conclude that certain modifications to the current revenue-based contribution assessment methodology should be adopted now to ensure that the goals of the Act are maintained in the short term. Specifically, the measures we adopt in the Order will ensure that universal service funding remains specific and predictable while we consider whether to implement more substantial changes to the contribution methodology. In addition, these modifications will ensure that the recovery of universal service contributions is more understandable for consumers. These measures also will further reduce the regulatory costs of complying with universal service obligations and will ensure that the assessment of contributions remains equitable and nondiscriminatory.

3. First, we revise the Commission's rules to exclude universal service contributions from a contributor's assessable gross-billed interstate telecommunications revenues. This modification addresses ''circularity'' in the current methodology that may cause contributors to mark-up line items. Second, we amend the rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries. Third, we increase from eight to 12 percent the amount of domestic interstate revenues a contributor may have and still qualify for the limited international revenues